TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No 295.

VENABLE & SON, PLAINTIFFS IN ERROR,

vs.

GEORGE S. RICHARDS, COLLECTOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

FILED OCTOBER 4, 1879.

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1 In the circuit court of the United States for the eastern district of Virginia, at Richmond, in said district, October 17th, 1877.

VENABLE & SON
vs.
GEORGE S. RICHARDS. } No. 1277. Trespass on the case.

Be it remembered that heretofore, to wit, on the 5th day of May, 1876, came the United States of America, by the district attorney, and filed its petition in the clerk's office of the circuit court of the United States for the eastern district of Virginia; which petition, together with the writ of certiorari issued in accordance therewith, and the return thereon, is as follows:

2 To the honorable the judges of the circuit court of the United States for the eastern district of Virginia:

The petition of Geo. S. Richards, of the city Petersburg, in the said State, respectfully represents:

That he is, and for the last four years has been, collector of internal revenue for the second collection district of Virginia, duly appointed and acting under the provisions of the internal revenue laws of the United States.

That in the month of November, A. D. 1875, your petitioner was sued in in an action of assumpsit, brought in one of the courts of the State of Virginia, to wit, in the circuit court of the said city of Petersburg by Jos. E. Venable and Wm. L. Venable, partners, doing business under the firm name and style of Venable and Son, to recover of your petitioner a large sum of money, to wit, the sum of $5,069.96, being a sum of money exacted by, and paid to, your petitioner as collector aforesaid by the said Venable & Son, in the years aforesaid, as internal-revenue tax due to the United States on a large quantity of snuff then and there belonging to the said Venable & Son, and liable to said tax, which sum of
3 money was by your petitioner, as internal-revenue collector, as aforesaid, in the performance of his official duty, paid into the Treasury of the United States.

Your petitioner would further represent that said action is now pending in the said circuit court of the city of Petersburg, and has never been tried or disposed of.

Wherefore your petitioner respectfully prays that said action may be removed into this honorable court for trial; that a writ of certiorari issue to the said circuit court of the city of Petersburg, requiring said court to send to this honorable court the record and proceedings in said cause.

And your petitioner will ever pray.

G. S. RICHARDS.

UNITED STATES,

Eastern District of Virginia, to wit:

This day personally appeared before me, the undersigned, a commissioner of the circuit court of the United States for the said district, George S. Richards, whose name is signed to the foregoing petition, who made oath that the statements contained in said petition are true.

Given under my hand this 5th day of May, A. D. 1876.

4 THOS. S. ATKINS,
U. S. Comm'r.

I, L. L. Lewis, an attorney, practicing in the circuit court of the United States for the eastern district of Virginia, do certify that, as attorney for George S. Richards, whose name is signed to the foregoing petition, I have carefully enquired into all the matters set forth in the petition, and that I believe them to be true.

L. L. LEWIS,
Attorney for Geo. S. Richards.

Writ of certiorari.

The President of the United States of America to the judge of the circuit court of the city of Petersburg, of Virginia, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the eastern district of Virginia, in the fourth circuit, shall be certified of a certain cause commenced before you, against George S. Richards, defendant, by Jos. E. Venable and Wm. L. Venable, partners, doing business under the firm-name and style of
5 Venable & Son, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of Richmond, forthwith, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, esquire, Chief Justice of the Supreme Court of the United States, the eighth day of May, in the year one thousand eight hundred and seventy-six.

[SEAL.] M. F. PLEASANTS, *Clerk.*

Return.

May 13th, 1876. Executed by delivering to Hon. S. S. Weiseger, judge of the circuit court of the city of Petersburg, a true copy of within writ.

C. P. RAMSDELL,
U. S. Marshal.

In accordance with the foregoing writ of certiorari, the following record of the circuit court of the city of Petersburg was filed in the said circuit court of the United States on the 13th day of June, 1876, viz:

6 And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 6th day of June, 1876,

It appearing to the court that the writ of certiorari to remove the above-entitled cause from the circuit court of the city of Petersburg to this court, issued from this court on the 8th day of May, 1876, has been returned executed as of the 13th day of May, 1876; and it further appearing that no return has been made by said circuit court of Petersburg to the said writ, and that no copy of the record and proceedings can be obtained, it is ordered, upon motion of L. L. Lewis, U. S. attorney, that the said plaintiffs proceed de novo, unless a copy of said record and proceedings as required by said writ be certified to this court on or before the 16th day of June instant.

Richmond, June 6th, 1876.

HUGH L. BOND, *Judge.*

The following opinion of the court was filed in the cause relating to the foregoing order, viz:

Opinion of the court.

7 Richards, the defendant in this action, was collector of internal revenue in the district where plaintiffs carried on business as manufacturers of snuff, and required of the plaintiffs the payment of a tax on the snuff manufactured by them, which the plaintiffs allege was in excess of the tax legally demandable to the amount of five thousand and sixty dollars.

The plaintiffs appealed to the Commissioner of Internal Revenue for a reduction of the tax as required by law, and asked that the excess might be returned to them, which the Commissioner refused to do.

The plaintiffs brought suit in the circuit court of the State for the city of Petersburg, to recover the sum of $5,069.96 so paid in excess of taxes, and the collector filed his petition in this court under the act of 1866, R. S. 643, for a writ of certiorari to remove the cause from the State court into the circuit court of the United States. This application is resisted on the part of the plaintiffs on the ground that the act of 1875 relating to the jurisdiction of the circuit courts of the United States and to the removal of causes from the States courts thereto
8 repealed the act of 1866 relating to the same subject, and that as the defendant has not complied with the provisions of the act of 1875, chap. 137, his petition for writ of certiorari ought to be disallowed.

The sole question, therefore, which the court is called upon to decide is whether the 10th section of the act of 1875, chap. 137, which repeals all acts and parts of acts in conflict with its provisions, repeals the act of 1866, chap. 184, now contained in the Revised Statutes, sec. 643.

The act of 1875, by its 2nd section, provides that all suits which arise under the laws of the United States shall be removed in the manner provided in that statute.

The act of 1866 (sec. 643 of R. S.) provides that when any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the U. S. on account of any act done under color of his office or of any such law the proceedings for removal shall be such as it prescribes.

So that it appears that to remove a case under the provisions of the act of 1875 it is necessary only that it arise under a law of
9 the United States, whereas to remove it under the act of 1866 it is not only necessary that the suit should arise under the law of the United States, but that it should be brought against an officer of the United States or some one acting under his authority.

The act of 1866 related to civil suits and to criminal prosecutions brought against the officers of the United States.

The act of 1875 relates to civil causes only, so that in one respect it is manifest it was not intended to repeal and does not repeal the former act.

Again, under the act of 1866, all suits without respect to the amount involved may be removed, whereas under the act of 1875 the matter in dispute must be of the value of $500, exclusive of costs, so that it was not intended to repeal so much of the act of 1866 as allowed the removal of suits where a revenue officer was concerned which involved a less amount than $500, because that provision is not in conflict with the act of 1875 allowing the removal of causes involving $500 and upwards.

Again, by the act of 1866 the cause may be removed before trial or final hearing, while under the act of 1875 it must be removed
10 before the term at which it could first be tried, and under the one act a bond must be filed while the other requires none, the removal being had upon the filing of a petition to that effect merely.

It seems to us that the act of 1875 was not passed to restrict but to enlarge the jurisdiction of United States courts.

In this suit the United States are the real defendants, and while in other cases for the safety of litigants it may be necessary to require a bond to be given to abide the result of suit, when a revenue officer is sued, for whom the United States in his official capacity have made themselves responsible, such a requirement is unnecessary, and when so many officers of the government are to be consulted in respect to the merits of a case, and the propriety and ground of defence, it is not unreasonable that a longer delay in the determination of the question of removal should be given than in cases between individual citizens who have complete control over their own suits. A general clause repealing all laws in conflict with a previous statute cannot be held to do so by implication. The former statute must be plainly in conflict
11 with the repealing statute before it can be held to be repealed.

We do not think the act of 1866, R. S., section 643, is in conflict with the act of March, 1875, chap. 137, and the jurisdiction of this court over this suit will be maintained.

HUGH L. BOND, *Judge.*

And at another day, to wit, on the 13th day of June, 1876, a record of the circuit court of the city of Petersburg was filed in this cause, which record is in the words and figures following, to wit:

RECORD OF THE CIRCUIT COURT OF THE CITY OF PETERSBURG.

12 VIRGINIA:

Pleas before the circuit court of the city of Petersburg, at the court-house, on Saturday the 10th day of June, A. D. 1876.

Be it remembered that heretofore, to wit, in the clerk's office of the said circuit court, the 28th day of October, 1875, came Jos. E. Venable and Wm. L. Venable, partners trading under the firm and style of Joseph E. Venable & Son, by their attorneys, and sued out their writ of summons against George S. Richards, which, with the return of the sergeant endorsed thereon, is in the words and figures following, to wit:

Summons.

The Commonwealth of Virginia to the sergeant of the city of Petersburg, greeting:

You are hereby commanded to summon George S. Richards to appear on the first Monday in Nov'r, 1875, (being rule-day), at the clerk's office of the circuit court for the city of Petersburg, directed to be holden at the court-house thereof, to answer Joseph E. Venable and Wm. L. Venable, partners trading under the firm and style of Joseph E. Venable & Son, of a plea of trespass on the case. Damage, $5,500.

And have then and there this writ. Witness John C. Armi-
13 stead, clerk of our said court at Petersburg, the 28th day of October, 1875, and in the 100th year of the Commonwealth.

JOHN C. ARMISTEAD, *Clk.*

Return.

Executed this 28th day of Octo., 1875, by delivering a true copy of the within summons to G. S. Richards.

J. A. JOHNSON,
S'g't City, Pet'g.

And at another day, to wit, at rules held in the clerk's office of the said court, Monday, the 1st day of November, 1875.

Came the plaintiffs' by their attorneys, and filed their declaration against the defendant, which declaration is in these words:

Declaration.

STATE OF VIRGINIA,
City of Petersburg, to wit:

In the circuit court of the said city.

Jos. E. Venable and Wm L. Venable, partners, trading under the name and style of Joseph E. Venable & Son, complain of George S. Richards, who has been summoned to answer them of a plea of tress-pass on the case, for this:

14 Whereas heretofore, to wit, on the 18th June, 1875, and divers days before that day, the said plaintiffs were engaged in manufacturing snuff, on that day and divers days before that day, at the city of Petersburg and in the State of Virginia, when one George S. Richards, claiming and acting as United States revenue collector for the 2nd internal revenue district of Virginia, in which said district the city of Petersburg is situated, assessed and collected of the said plaintiffs thirty-two cents per pound on all snuff manufactured by them at their snuff manufactory, situated as aforesaid, between the 1st July, 1872, and the 2nd March, 1875, which was a large quantity, to wit, thirty-nine thousand four hundred and thirty-two (39,432) pounds, making a large sum of money, to wit, $12,618.24, which sum was $4,731.84, or 12c. per lb. more than the said defendant as collector aforesaid was authorized by act of Congress 6th June, 1872, then in force, to assess and collect on the said plaintiffs' snuff, consisting of 39,432 lbs.

And the said plaintiffs further allege that the said defendant, as collector aforesaid, at another time, to wit, between the 2nd March, 1875, and the 18th June, 1875, at the city aforesaid, assessed and col-

15 lected thirty-two (32c.) per pound on another large quantity of snuff manufactured by said plaintiffs, to wit, 4,226½ pounds, making a large sum of money, to wit, the sum of $1,352.48, which was $338.12—eight cents per lb. more than the said defendant was authorized by act of Congress of June 6th, 1875, to assess and collect on that number of pounds of snuff; which two sums of money, $4,731.84 and $338,12, amount to a large sum, of $5,069.96.

And the said defendant, as collector aforesaid, on the said 18th June, 1875, and divers days before that day, threatened the said plaintiffs that unless they would pay this sum, to wit, $5,069.96, thus illegally and wrongfully assessed and demanded of them, that they would seize the said snuff belonging to the said plaintiffs at the times and places aforesaid.

Whereupon the said plaintiffs, solemnly objecting and protesting against the illegal and wrongful assessment of the said snuff at thirty-

two cents per lb. and against the seizure thereof, paid, at the times and places aforesaid, the said illegal and wrongful assessment and demand of $5,069.96 to the said defendant as collector aforesaid.

Whereupon the said plaintiffs afterwards, to wit, on the 12th day of October, 1875, appealed to the Commissioner of Internal Rev-
16 enue, at Washington, according to the requirements of the statute made and provided in such cases and the regulations of the department, to have the said sum of $5,069.96 (which the said plaintiffs were thus illegally compelled to pay to the said defendant as collector at the times and places aforesaid) refunded to them.

And the said Commissioner of Internal Revenue at Washington afterwards, to wit, on the 15th day of October, 1875, refused to refund the said sum of $5,069.96 thus illegally demanded and collected of them the said plaintiffs by the said defendant as aforesaid, at the city aforesaid, and at the time aforesaid.

Whereupon the said George S. Richards, as defendant, became liable to pay the said plaintiffs the sum of $5,069.96, and being so liable, the said defendant, in consideration thereof, then and there undertook and faithfully promised the said plaintiffs to pay them the said sum of $5,069.96, whenever the said defendant should be thereafterwards requested, but to pay the same or any part thereof, although often requested to do so, the said defendant hath hitherto refused, and still doth refuse, to the damage of the said plaintiffs of $5,500.

And further, whereas, on the 1st July, 1872, and on divers days between that day and the institution of this suit, the said
17 plaintiffs were engaged in the manufacturing of snuff at the city and State aforesaid, when one Geo. S. Richards, claiming to act as collector of internal revenue for the 2nd district of Va., assessed the said plaintiffs with thirty-two cents per lb. on all snuff manufactured by them between the said 1st July, 1872, and the 2nd March, 1875, which was a large quantity of snuff, to wit, 39,432 lbs., making a large sum of money, to wit, $12,618.24, on which said number of lbs. the said defendant required the said plaintiffs to purchase internal-revenue stamps of the denomination of thirty-two cents (32c.) and affix the same on his said snuff, which sum was $4,731.84 more than the said defendant as collector aforesaid was authorized by act of Congress to assess or require the said plaintiffs to purchase stamps of said denomination for.

And at another time, to wit, between 2nd March, 1875, and 18th June, 1875, the said defendant as collector aforesaid assessed the said plaintiffs on all the snuff manufactured by them between the said 2nd March, 1875, and 18th June, 1875, 32c. per lb., which was a large quantity of snuff, to wit, 4,226½ lbs., making a large sum of money, to wit, $1,352.48, on which said number of lbs. the said defendant required the said plaintiffs to purchase internal-revenue stamps of the de-
18 nomination of 32c. and affix same on his said snuff, which sum was $338.12 more than the said defendant as collector aforesaid was authorized by act of Congress to assess and require the said plaintiffs to purchase stamps of said denomination for; which two sums of money, to wit, $4,731.84 and, to wit, $338.12, amount to a large sum of money, to wit, $5,069.96; and the said defendant as aforesaid, at the city and State aforesaid, and at the times aforesaid, threatened unless the said plaintiffs then and there paid the said sum of $5,069.96 or purchased stamps to that amount that he would seize the said snuff, but that said plaintiffs, solemnly objecting to said assessment and demand and to the said forced purchase of stamps of the denomination

of 32c., and against the threatened seizure of their said snuff, paid the said illegal assessment and demand of $5,069.96 (or purchased internal-revenue stamps to that amount) to the said defendant at the city and State aforesaid and at the times aforesaid.

Whereupon the said plaintiffs aforesaid, afterwards, to wit, on the 12th day of October, 1875, appealed to the Commissioner of Internal Revenue at Washington, according to the requirements of the statute made and provided in such cases and according to the rules and
19 regulations of the internal-revenue department, to have said sum of $5,069.96, which the plaintiffs had before that time been compelled to pay, or for which amount they had been compelled to purchase internal-revenue stamps of the 32c. denomination, refunded to them, and the said Commissioner of Internal Revenue at Washington, on 15th October, 1875, refused to refund the said sum of $5,069.96 which had been before that time illegally demanded and collected of them by the said defendant at city aforesaid, and at the times aforesaid. Whereupon and by reason of the premises, the said Geo. S. Richards, as defendant aforesaid, became liable to said plaintiffs in the sum of $5,069.96, and being so liable, in consideration thereof, the said defendant then and there promised to pay to the said plaintiffs the said sum of $5,069.96 whenever he should be requested, but to pay the same or any part thereof, though often requested, he, the said defendant, hath hitherto refused, and still doth refuse, to the damage of the said plaintiffs $5,500.

And whereas further, to wit, that heretofore, to wit, on the 18th June, 1875, and divers days before that day, the said plaintiffs were en-
20 gaged in grinding leaf tobacco, or in making granulated tobacco, which is snuff, at their factory, situated in city and State aforesaid, when one Geo. S. Richards, claiming to act as collector of internal revenue for the 2nd district of Virginia, collected of the said plaintiffs $13,970.72, which was a tax of 32c. per lb. on 43,658½ lbs., on said ground or granulated tobacco or snuff, which was a great sum of money, to wit, $5,069.96 more than said defendant was authorized by act of Congress of June 6th, 1872, and its amendments, to collect on 43,658½ lbs. of said ground leaf tobacco, or granulated tobacco or snuff; and the said defendant threatened if said additional sum of $5,069.96 was not paid to him as collector, on the said ground or granulated tobacco or snuff, he would seize the said ground or granulated tobacco at the city aforesaid, and at the time aforesaid. Whereupon the said plaintiffs, at the city aforesaid and at the place aforesaid, solemnly protested against said payment of said additional sum, or the purchase of internal-revenue stamps for said ground leaf or granulated tobacco, paid said sum of $5,069.96 to the said defendant at the city aforesaid, and at the time aforesaid. Whereupon the said plaintiffs afterwards, to wit, on the 12th day of October, 1875, appealed to the Commis-
21 sioner of Internal Revenue at Washington, according to the forms of the statute and the regulations of the department, to have the said sum of money, $5,069.96, thus illegally and wrongfully assessed and demanded on his said ground or granulated tobacco or snuff, to wit, the sum of $5,069.96, refunded to them; and the said Commissioner of Internal Revenue at Washington, afterwards, to wit, on October 15th, 1875, refused to refund the said sum of $5,069.96 thus illegally collected and demanded of them, at the times and places aforesaid. Whereupon the said Geo. S. Richards, as defendant aforesaid, became liable to pay the said plaintiffs the said sum of $5,069.96, and being so liable, he the said defendant, in consideration thereof, then and there undertook and

faithfully promised to pay the said sum of $5,059.95 whenever the said defendant should be thereafterwards requested, but to pay the same or any part thereof, though often requested so to do, he, the said defendant, hath hitherto refused, and still doth refuse, to the damage of the plaintiffs $5,500.

And whereas also, heretofore, to wit, on the 18th day of June, 1875, and divers days before that day, the said defendant as aforesaid was indebted to the said plaintiffs in another sum of $5,500, for so much money by the said plaintiffs to the use of said defendant, at his
22 special instance and request, before that time laid out, paid, and expended; and also in the further sum of $5,500 for so much money to the said defendant, at his special instance and request, before that time lent and advanced by the said plaintiffs; and also in the further sum of $5,500 for so much money by the said defendant to the use of the said plaintiffs before that time had and received, and being so indebted therein the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, and divers days before that time, at the places aforesaid, assumed upon himself, and then and there promised the said plaintiffs that he would well and faithfully pay to them the several sums of money in this mentioned when thereunto afterwards he should be requested.

And whereas also the said defendant afterwards, to wit, on the day and year aforesaid and place aforesaid, accounted with the said plaintiffs of and concerning divers sums of lawful money from the said defendants to the said plaintiffs before that time due and owing, and then and there in arrear and unpaid, and upon that account the said defendant was there found in arrears and indebted to said plaintiffs in the further sum of $5,500, and being so found in arrear and indebted the
23 said defendant, in consideration thereof, afterwards, to wit, on the day and year and place last aforesaid, assumed upon himself and then there promised to the said plaintiffs that he would well and faithfully pay to the said plaintiffs the said last-mentioned sum of $5,500 when he should be thereafterwards requested; yet the said defendant, not regarding the several promises and assumptions aforesaid, hath not as yet paid the said several sums of money, or any part of same, or either of them, to the said plaintiffs, although often requested to do so, but to pay the same or any part thereof hath hitherto refused and still doth refuse, to the damage of said plaintiffs $5,500; and therefore they bring their suit, &c.

BURWELL & PEGRAM, *P. Q.*

Whereupon, the defendant being summoned and not appearing, on motion of the plaintiffs, by their attorneys, it was ordered that judgment be entered for the plaintiffs against the defendant for what damages the plaintiffs had sustained by occasion of the non-performance of the promises and assumptions in the declaration mentioned, unless the said defendant should appear and plead to issue at the then next rules.

24 At which day, to wit, at rules held in the clerk's office of said circuit court on Monday the 29th day of Nov., 1875:

The defendant still failing to appear, on motion of the plaintiffs, by their attorney, it was ordered that the last order made against him in this case be confirmed, and that the plaintiffs, damages be ascertained by a jury at the then next term.

And now at this day, to wit, in the said circuit court of Petersburg, June 10th, 1876, being the day first herein mentioned:

A writ of certiorari having been served upon the judge of this court commanding him forthwith to send and certify the record and proceedings in this suit, with all things touching the same, to the circuit court of the United States for the eastern district of Virginia, at Richmond, as fully and amply as the same remains in this court, whereupon it is ordered that the same be certified accordingly.

The following is copy of rejection of plaintiffs' claim by Com-
25 missioner of Internal Revenue, filed with declaration:

TREASURY DEPARTMENT, OFFICE OF INT. REVENUE,
Washington, D. C., Oct. 15th, 1875.

SIR: The claim of Joseph E. Venable & Son for the refunding of $5,069.96 on account of tax paid on snuff, at the rate of 32 cts. per lb., is rejected for the reason that the tax was due and legally collected.

Respectfully,

D. D. PRATT, *Commissioner.*

GEO. S. RICHARDS,
Coll. 2nd Dist., Petersburg, Va.

I hereby certify that this is a true and correct copy an original letter now on file in this office.

G. S. RICHARDS,
Coll. 2nd Dist. of Va.

26 *Bill of particulars filed with declaration.*

George S. Richards, coll'r of 2nd int. rev. dist., Dr. to Joseph E. Venable & Son.

1875.

March 2.	To 39,432 lbs. snuff, @ 12c. additional tax	$4,731 84
June 18.	" 4,226½ lbs. snuff, @ 12c. additional	338 12
		$5,069 96

A true transcript of the record.

Teste:

JOHN C. ARMISTEAD, *Clerk.*

Statement costs.

Plaintiffs' costs: Clerk, $7.43; sergeant, .50; attorney & tax, 8.50—$16.43.

JOHN C. ARMISTEAD, *Clerk.*

And at another day, to wit, at a circuit court of the United
27 States for the district aforesaid, held at Richmond aforesaid, on the 17th day of July, 1876:

In case of Venable & Son vs. Geo. S. Richards, collector, it is hereby ordered that this case be set down to be heard on the 5th September, 1876.

RO. W. HUGHES, *Judge.*

And at another day, to wit, at a circuit court as aforesaid, held as aforesaid, on the 5th day of September, 1876:

This day came the parties, by their attorneys, and thereupon the defendant, by his attorney, filed a plea of non-assumpsit, to which the plaintiffs replied generally; and a jury having been waived, and the court having heard the testimony of witnesses and the argument of counsel, time is taken by the court to consider of its decision.

And at another day, to wit, at a circuit court of the United States for the district aforesaid, held at Richmond aforesaid, on the 4th day of October, 1876:

28 A jury having been waived in this cause, by consent of both parties, and the case having been submitted to the court on the testimony heretofore adduced, and having been argued by counsel, the court doth thereupon find that the said defendant did not promise and undertake in manner and form as the said plaintiff hath above alleged against him; and thereupon it is considered that the said plaintiffs take nothing by their action aforesaid, and that the defendant go thereof without day.

And it is further considered that the said defendant have judgment against the said plaintiffs for his costs by him in this behalf expended, to be taxed.

And the court here having taxed the costs of said defendant at forty-three dollars and eighty-seven cents, it is ordered that judgment final for said sum be entered in favor of said defendant and against said plaintiffs.

RO. W. HUGHES, *Judge.*

And at another day, to wit, at a circuit court of the United States for the district aforesaid, held at Richmond aforesaid, on the 1st day of November, 1876:

29 On motion of the plaintiffs, by counsel, it is hereby ordered that the judgment rendered in this cause at the present term, to wit, on the 6th October, 1876, be set aside until the bill of exceptions allowed at the trial of this cause shall be signed.

RO. W. HUGHES, *Judge.*

And now at this day, to wit, at a circuit of the United States for the eastern district of Virginia, held at Richmond, in said district, on the 15th day of October, 1877:

A jury having been waived in this cause, by consent of both parties, and the cause having been submitted to the court on the testimony heretofore adduced, and having been argued by counsel, the court doth hereby find that the said defendant did not promise and undertake in manner and form as the said plaintiffs have above alleged against him; and thereupon it is considered that the said plaintiffs take nothing by their action aforesaid; and the defendant go thereof without day. And it is further considered that the said defendant have judgment

30 against the said plaintiff for his costs by him in this behalf expended, to be taxed.

And the court having taxed the costs of the said defendant forty-three dollars and eighty-seven cents, it is ordered that judgment final for said sum be entered in favor of said defendant and against said plaintiffs.

RO. W. HUGHES, *Judge.*

And on the same day, to wit, at a circuit court as aforesaid, held as aforesaid, on the 15th day of October, 1877:

And now at this term, to wit, a court held at the October term, 1877, on motion of plaintiffs, by counsel, a writ of error is allowed them to the Supreme Court of the United States from judgment rendered against them at said term.

And it is ordered that the said plaintiffs, or some one for them, execute a bond, with sufficient securities, in the sum of $100, to be approved by clerk, for payment of costs, and conditioned accordingly.

RO. W. HUGHES, *Judge.*

And at another day, to wit, at a circuit court of the United States for the eastern district of Virginia, held at Richmond aforesaid, on the 30th day of June, 1879:

On motion of the plaintiffs, by their attorney, a new writ of error (the allowance of the old writ not being prosecuted by filing a transcript at the term next succeeding its allowance) is hereby allowed them from a judgment rendered in this cause of the 15th day of October, 1877, and it is ordered that the said plaintiff', or some one for them, execute a bond before the clerk of this court in the penalty of $100, to be approved by said clerk, for payment of the costs, and conditioned according to law.

RO. W. HUGHES, *Judge.*

31 *Bill of exceptions.*

Be it remembered before the issue was joined in this cause the plaintiffs, by counsel, moved the court to set aside the former order of removal entered on the 6th June, 1876, marked A, and asked to be made a part of this bill of exceptions, and send the same back to the circuit court of Petersburg, to be there tried; which motion being overruled, the plaintiffs except, and pray, &c.

RO. W. HUGHES, [SEAL.]
Judge.

And be it further remembered that after the issue was joined in the cause the parties, through counsel, submitted the law and facts to the court, under sect. 649 Rev. Statutes, with a stipulation in writing filed in this cause, marked B, that the facts proved by the evidence should be specifically formed by the court; which facts are found and certified as follows:

That the plaintiffs were manufacturers of snuff, doing business in the city of Petersburg, Va., and as such paid, from 1st July, 1872, monthly, the respective sums in the official statement marked A.

32 *Statement of amounts paid by Jos. E. Venable & Son on snuff, at 32c. per pound, from August, 1872, to May, 1875, both inclusive.*

August	1,115 44	
Sept	602 16	
Octo	675 04	This sum should be
Nov'ber	100 64	$856.48, as corrected by
Dec	171 40	Mr. Richards' fig's.

1873.				
Jan'y	987	36		
Feb'y	432	72		
M'ch	403	20		
Apr	382	88		
May	698	56		
June	157	44		
July	197	12		
Aug	331	20		
Sept	380	16		
Octo	142	88		
Nov	189	96		
Dec	86	48		
1874.				
Jan'y	360	64		
Feb'y	103	68		
M'ch	1,162	18		
Apr	286			
May	420	92		
33 June	250	88		
July	82	18		
Aug	320	64		
Sept	247	68		
Octo	152	64		
Nov	293	76		
Dec	172	80		
1875.				
Jan'y	714	24		
Feb'y	51	84		
				$12,617 28
M'ch	450	88		
Apr	365	92	Exhibit D. Michael Rahily, dep'y coll.	
May	253	44		
June, D	281	84		
				1,352 08
				$13,970 74

D. The month of June, 1875, to institution of suit, $281.84, as shown by corrected fig's of Richards.

To 3rd March, 1875, at 32c. per lb., amounting to $12,617.28, which the plaintiffs claim was $4,731.84 or 12c. per lb. more than ought really to have been collected of them on that amount of snuff. Further, they prove that they paid from 3rd March, 1875, monthly, as will be seen from the official statement herewith filed (marked as Exhibit D), to 18th June, 1875, at 32c. per lb., amount $901.20, which the plaintiffs claimed was 338.12, or 8c. per lb., more than ought legally to
34 have been collected, making the total sum of $5,069.96 more than was due, as claimed by the plaintiffs.

The plaintiffs further proved that after protesting against the payment of these said sums of money they made an appeal to the Commissioner of Internal Revenue, at Washington, according to the terms of the statutes and the regulations of the department provided in such cases, to refund the said sum of $5,069.96, and that the said appeal was rejected by said Commissioner.

Further, they brought their suit within six months after said rejection.

Further, they proved that the said Commissioner instructed collectors that all tobacco and snuff stored in bonded warehouses at the time of the amended act of 6th June, 1872—

"Tobacco in bonded warehouses at the time of the passage of the act of June 6th, 1872, or stored in export bonded warehouses prior to July 1st, 1872, may, at any time within six months from the first-named date, be withdrawn for export to a foreign country without payment of tax and without any change of packages, upon compliance with
35 the rules and regulations of the Commissioner of Internal Revenue concerning withdrawals of tobacco and snuff from bonded warehouses, and upon an order or permit from the collector in charge of exports at the port of shipment. All tobacco and snuff stored in bonded warehouses at the time of the passage of the act of June 6, 1872, can be withdrawn for consumption or sale after July 1, 1872, and prior to December 6, 1872, upon the payment of the reduced rate of tax by proper stamps affixed and canceled. But tobacco and snuff which shall have been stored in the export bonded warehouses between the dates of June 5 and July 1, 1872, if withdrawn for consumption or sale, must have affixed and canceled stamps representing the tax in force at the time the goods were entered in bond. All tobacco and snuff remaining in any bonded warehouse for a period of more than six months after the passage of the act of June 6, 1872, that is found in any bonded warehouse on and after December 6, 1872, is declared by said act to be forfeited to the United States, and the Commissioner of Internal Revenue is authorized and directed to cause the same to be sold for the benefit of the United States"—

36 could be withdrawn at the reduced rate of that act. Further, they produced witnesses who stated that granulated tobacco was a term not known to the trade in Virginia, and none of these witnesses could state what the law meant by granulated tobacco, but they all know what it meant by snuff. There being no evidence to show that the term snuff was synonymous with the term granulated tobacco, the court, upon construction of section 3368 of the Revised Statutes of the United States, found that the plaintiffs, being manufacturers of snuff, were properly assessed with 32c. a pound on the same, in accordance with the first clause of the said section, and that granulated tobacco was not snuff, and that, therefore, the rate of tax fixed in the second clause of the said section was not applicable to them.

Whereupon the court found for the defendant on the issues joined.

Whereupon the plaintiffs moved the court for a new trial, which the court overruled. And thereupon the court rendered judgment on the above finding for the defendant, to which counsel for pl'ffs excepted, and prayed that this his 2nd bill of exceptions be signed & sealed, which is accordingly done.

RO. W. HUGHES, [SEAL.]
Judge.

37 UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, hereby certify that the foregoing is a true and complete copy of all the record and proceedings in the above-entitled cause, so far as the same remains on the records of my office.

In testimony whereof I have hereunto set my hand and affixed the

seal of said court, at Richmond, this 13th day of September, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] M. F. PLEASANTS, *Clerk.*

38 UNITED STATES OF AMERICA, *to wit:*

The President of the United States to the judges of the circuit court of the United States for the eastern district of Virginia, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said court, before you, between Venable & Son and George S. Richards, a manifest error hath happened, to the great damage of the said Venable & Son, as by complaint appears: He being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington City, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

Witness the honorable M. R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] M. F. PLEASANTS,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

39 UNITED STATES OF AMERICA, *to wit:*

To George S. Richards, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the court-room in the Capitol, in the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Virginia, wherein Geo. S. Richards is defendant and you, the said Venable & Son, are plaintiffs in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] RO. W. HUGHES,
U. S. Dist. Judge.

Service of the foregoing citation is hereby acknowledged for George S. Richards.

L. L. LEWIS,
U. S. Attorney and Attorney for Geo. S. Richards.

SEPT. 13, 1879.

No. . United States district of Vir. Venable & Son vs. Geo. S. Richards, collector of int. rev. Citation. Filed 186.
, clerk.

JOSEPH E. VENABLE & SON
vs.
GEORGE S. RICHARDS, COLLECTOR, &C.

Know all men by these presents that we, W. P. Burwell and Appleby & Helme, are held and firmly bound unto George S. Richards in the sum of one hundred dollars, to be paid to the said George S. Richards, his heirs, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 29th day of September, A. D. 1879.

Whereas the above-named Joseph E. Venable & Son hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the eastern district of Virginia:

Now, therefore, the condition of this obligation is such that if the above-named Joseph E. Venable & Son shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. P. BURWELL, [SEAL.]
APPLEBY & HELME, [SEAL.]
By WM. BURWELL. [SEAL.]
Their Att'y in Fact.

Sealed and delivered in presence of—
[SEAL.] M. F. PLEASANTS, *Clerk.*

(Indorsement on cover:) No. 295. Venable & Son, plaintiffs in error, vs. George S. Richards, collector of internal revenue. E. Virginia C. C. U. S. Filed 4th October, 1879.

OFFICE SUPREME COURT U.S.
FILED
APR 13 1882
JAMES H. McKEN

In Supreme Court of the United States.

VENABLE & SON

vs.

RICHARDS, *Collector, &c.*

Brief in Behalf of the Plaintiffs.

I.

The first assignment of error in the record is, that the Circuit Court of the United States entertained jurisdiction in this cause when it had none, because it had been irregularly and improperly removed from the State Court at Petersburg, Va., on a petition filed in the clerk's office of the Circuit Court of the United States for the Eastern District, and the issue therefrom of a *certiorari*, both of which had no authority of law.

The contest here turns on the question, whether this case is removable under the 2d and 3d Sections of act of 1875, or the 643 of R. S.

The former enacts in its 2d Section, "That ANY suit of a civil nature, at law or in equity, now pending or hereafter brought in any State Court, when the matter in dispute exceeds, exclusive of costs, $500, and arising under the Constitution and Laws of U. S., * * * may be removed into the U. S. court by petition and proper bond filed in State Court."

The former (643 R. S.) provides, "That when any civil suit or criminal prosecution is commenced in a State Court against an officer appointed, or acting under authority of a revenue law of U. S., * * * the same may be removed for trial in the Circuit Court of U. S. by a petition addressed to *that tribunal.*"

And Section 10th of act 1875, "Repeals all acts and parts of acts in conflict with provisions thereof."

The case at bar, we submit, possesses every element required by this 2d Section of act 1875, and is, therefore, only removable under the conditions prescribed by the 3d Section of said act, as to the *court where* the *petition* is to be *filed*, as to the *bond and condition* prescribed, and as to the *time* at which it *is to be removed.*

For it is a suit of a civil *nature at law, brought in a State Court*, involves, exclusive of costs, a sum exceeding $500, and is a case or suit arising under the revenue laws of the U. S.

Observing the title of this act, it defines and determines the original jurisdiction of the Circuit Court of U. S. almost in the language of the constitution, and regulates the *removal* of civil cases from State Courts to the Circuit Court of U. S.

This 2d Section defines in what cases the right to remove exists. The 3d, the mode of making that right available.

As to *this mode of removing* civil cases from State Court, which arise (as this did) under the laws of the U. S., it may be observed that the *Section of R. S.*, and the *act* of 1875, are directly and irreconcilably opposed.

By one, the petition is in the Federal Court, and the order for removal entered therein ; by the other, it is addressed to the State Court, in which tribunal the order is entered. In one, the application is to be made before the "*trial or hearing thereof*;" and in the *other*, "*before or at the time at which the cause could be first tried*, and *before the trial thereof*."

The question now arises, which of these conflicting provisions shall control this case, in the presence of the direct, positive and complete repeal of all that portion of Section 643, R. S., which formerly provides for removal of suits of a CIVIL NATURE, when the matter in controversy exceeds $500, &c., &c.

In all cases in the courts, especially in those of inferior jurisdiction, where the authority to proceed is conferred by statute, the mode of proceeding directed by statute is MANDATORY.

The facts of this record bearing on this question of removal, are briefly these—

The plaintiffs sued out a writ on the 1st Monday in November, 1875, at the clerk's office, Circuit Court of city of Petersburg, Va., in an action of case in assumpsit to recover of the defendant a sum of money illegally exacted of them on their manufactured snuff, under the law of 6th June, 1872.

On 29 of November, 1875, the conditional order entered at the previous rule day, was confirmed against the said defendant, and a writ of enquiry issued,

At the fall term of the Circuit Court for city of Petersburg, this case was put on its docket, at which

term it was then TRIABLE *under the laws and practice in the State Courts of Virginia.*

The defendant not appearing at this fall term, which sat immediately after the conditional judgment was confirmed, it was continued for him until the spring term of the State Court, which commenced early in June, 1876, and which was the 2d term after the case went on the docket, and after it was triable.

On 6th May, 1876, the defendant filed his petition in Circuit Court of U. S. under Section 643, R. S., and a writ issuing on this was served on the judge of State Court on the 13th May, 1876. See pp. 1st and 2d Record.

At a Circuit Court of U. S., held on 6th June, 1876, on motion of the District Attorney, the plaintiffs were ordered to proceed "*de novo*," unless a copy of said record and proceedings, as required by said writ, be certified to this court on or before the 16th June.

This motion was resisted by the plaintiffs, on the ground that the case, IF REMOVABLE THEN, could only be removed under the requirements of the 3rd section of act 1875.

The motion however of the District Attorney prevailed, as will be seen from a long opinion of the judge on page 3 and 4, Record, in support of his order. This sets out several grounds in his judgment why the 643 section of Rev. Stats., was not repealed by the 2d and 3rd section of the act of 1875, each of which we submit, shows inconguity rather than harmony between the two acts.

It seems to us, said Judge Bond, that the act of 1875, was passed not to restrict, but to enlarge the

jurisdiction of United States Courts. It seemed not to have occurred to the judge that his views greatly restricted the right of removal, in this large class of cases which formerly came under this section; whereas, those contended for by the plaintiffs gave the right of removal to the plaintiffs, as well as defendants, and to plaintiffs, citizens in the State where the suit was instituted, as well as those plaintiffs, who were citizens of other States, and moreover gave the right of removal in cases, co-equal with the judicial power, as defined and limited in the Constitution itself.

There are some reasons also given in this opinion, why persons sued in an official capacity, should not be required to give bond, but these might have been addressed more properly to the legislative body, than to the judicial mind in the proper construction of two *conflicting statutes.*

The judge further says in this opinion, that a general law repealing all laws in confiict with a previous statute, cannot be held to do so by *implication*; but this 10th section makes a direct, absolute, and unconditional repeal of this 643rd section. So far as the civil causes formerly controlled in their removal to the Federal courts by it.

See *Murdoch* vs. *City of Memphis*, 20 Wall, 616.

Fox vs. *Commonwealth of Va.*, 16 Gratton, p. 1.

As far as this act of 1875, affects the subdivisions of 639 of R. S., we are not without *judicial* support to the views here presented. See leading case, *McMurdy* vs. *Connecticutt Gen'l Life Insurance Company*, 9 *Chicago News*, p. 324, where the Court holds that the requirements of section 3rd of act of 1875, as to

the nature of the bonds, extends to all cases mentioned in 2nd section of that act, and to *the extent of these requirements at least, this act repeals all former acts on the subject.*

It moreover holds that *bonds conditioned, as required by this 3rd section of the act, are condition precedents* now to the removal of a suit to the United States Courts.

It holds further that the court cannot proceed unless it has jurisdiction, whatever the conduct of the parties may have been; and therefore, unless the Circuit Court has acquired this removable jurisdiction, under and by a strict observance of the act of Congress controlling the removal, the plaintiffs lose nothing by their laches in having the cause remanded.

See also *Torey* vs. *Grant Locomotive Works*, 14 Blatch, 269, fully sustaining these views.

The petition in this case shows that it was removed from the State Court under the 643 Section of the R. S.; the pleadings and record in the State Court, taken together with the record of the Circuit Court of the U. S., show that it was a case *removable under the 3d Section* of act 1875; that the defendant removed it without applying for it in *time*, and without filing the petition and bond, conditioned as the 3d Section of said act requires.

The plaintiffs therefore moved the court at the first calling of the cause, after a copy of proceedings from the State Court was filed, and before submittiug themselves in any way to the jurisdiction of the Circuit Court to set aside the former order entered by Judge Bond on the 6 June, 1876, and remanded the same

to the Circuit Court of Petersburg to be there tried. See Record, p. 11, their Bill of Exceptions. We submit, therefor, inasmuch as this cause was not removable, under Section 643, into Circuit Court of U. S., its judgment should be reversed and this cause remanded to the State Court, whence it was improperly taken. We ask this further, on the anthority of this court in *Knapp* vs. *Railroad Co.*, 20 Wall., 117.

Merits of the Case.

We now pass to the merits of this controversy, and assign as error in the judgment in behalf of the defendant, to be found on p. 10 of the record, that the plaintiffs were entitled to recover under a proper construction of this 31st section of the act of June 6, 1872, because that act established a *uniform tax of* 20 *cents per pound* on all forms of manufactured tobacco, inclusive of snuff as one of these forms—whereas they were required, by the collector, to pay 32 cents per pound on a large amount of their snuff, the excess thus illegally demanded of them, being $5,069.

The 31st section of the act reads as follows:

"On all chewing and smoking tobacco, fine cut, cavendish, plug or twist, cut or granulated, of every description; on tobacco twisted by hand, or reduced to a condition to be consumed, or in any manner, other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut, shorts and refuse scraps, clippings, cuttings and sweepings of tobacco, a tax of 20 cents per pound."

See Section 31, Vol. 17, Statutes at Large, p. 250.

This 31 Section further contained this clause—

"All tobacco and SNUFF now stored in bonded warehouses shall be removed within 6 months, after the passage of the act, at the reduced rate of this act."

In Section 46, all acts and parts of act inconsistent with this act are hereby repealed.

Who can doubt that this 2d clause authorizes all snuff like other forms of tobacco, which had, under the old law, gone into these bonded warehouses at the rate of 32 cents per pound, to be taken out at the reduced rate of 20 cents, after the new law went into effect, was but a legislative declaration; that this amendment embraced snuff, like other forms of tobacco, under this uniform tax of 20 cents per pound. The proper rule of interpretation here being to construe one part of a statute by another.

See Potter's Dwarris, pp. 188, 89, 90, and cases thereon cited.

What an absurd consequence follows any other construction of these two clauses—vis, of some 20 to 30 million of pounds of tobacco and snuff, then in bonded warehouses, that both were to be taken out for consumption after 1st July, 1872, at 20 cents per pound tax, and put in competition, as regards the snuff in factories and that manufactured after that day, paying 32 cents tax.

Yet such an absurdity was put forward by the Commissioner of Internal Revenue, and under this ruling these plaintiffs were compelled to pay on their snuff in their factories, which also, (were bonded warehouses) as well as that manufactured after that day, 32 cents on every pound, while those manufacturers

who had their snuff, at time of passage of the law, in bonded warehouses, had only to pay 20 cents per pound for a period of six months thereafter.

By reference to the first clause of this 31st section the Court will see, that under the terms, "granulated tobacco of every description." Snuff is clearly included because snuff is *one of the forms of a ground or granulated tobacco.*

Again in same clause it further says, all tobacco reduced to a condition to be consumed other then the ordinary mode of drying and curing, (this means the planters' mode.) Here is a general description of every possible mode of manufactured tobacco, or rather every possible mode of the manipulation of tobacco for consumption or use, except that of the planter or farmers' curing or drying the green plant, as it is cut from the hill.

But Congress not satisfied with these general terms to include all forms of manufactured tobacco, under this reduced and uniform rate, says further: "On all tobacco prepared for sale or consumption in any manner other then the (farmer's) mode of drying and curing, there shal be levied 20 cents per pound tax.

If any doubt remained that Congress by these two clauses intended the uniform rate of 20 cents to apply to snuff, as well as other forms of manufactured tobacco, it would be removed by reference to the recommendation of the Commissioner in his annual report of 1871, just before Congress assembled urging that body to place all forms of manufactured tobacco, snuff, inclusive under a uniform rate, because the experience of the Department had shown that it was

greatly to the advantage of the manufacturers as well as to the Government that that rate should be uniform, and that the discriminating tax of the act of 1868 should be done away.

The debates in both Houses of Congress, show further that it was the purpose of each to put all forms of *manufactured tobacco under a uniform tax*, as recommended by the Commissioner. (See *Congressional Globe*, vol. 91, pp. 3965–72, inclusive. Also, 4078.)

Mr. Bayard says, p. 3970: "I am sorry the chairman of the Committee on Finance has broken from the *uniformity*. which I consided was the *principle* which recommended itself to me in committee, and caused me to give my suport to the proposition in committee, and does now in the Senate."

At p. 4070, Senator Logan renewed the proposition for a *graded tax*. Senator Johnson, said in regard to this amendment, "that this is a proposition which has already been voted down. If this amendment is adopted, the same evils, which flow from a discriminating tax will follow, and that too after the Senate by its vote has established the uniform rate.

The question was then taken on this amendment, yeas 21, nays 29. So the Senate again expressed its purpose for a uniform tax on all forms of manufactured tobacco.

And thus ended perhaps one of the most remarkable debates which has ever taken place on a revenue measure in both Houses, continuing at times for nearly 6 months in committee, and before both Houses of Congress, between the friends of a discriminating and

a uniform tax on all forms of tobacco, and the decided vote of both established the latter beyond question.

It will moreover be found at p. 13 of the R., that the Com'er instructed all of the collectors of Int. Rev. "that all *snuff and tobacco* stored in bonded warehouses, at the time of the amended act of 6 June, 1872, could be withdrawn at the *reduced rate of that act.*"

Here is an authoritative construction of this 31st Section, authorizing all snuff, as well as tobacco, in bonded warehouses to be withdrawn after the 1st July, the day fixed for the new act to go into effect, at the reduced rate of 20 cents.

To test this matter further, suppose the amendment had read that the 61 Section of act 1868, be amended after the 1st instead of the 2d clause, so as to read:

"That on all tobacco and snuff manufactured and sold, or removed for consumption or use, there shall be levied and collected the following taxes:

"On all chewing and smoking tobacco, fine-cut, plug or twist, cut or granulated, of every description, or tobacco twisted by hand, or reduced to a condition to be consumed, or in any manner, other than the ordinary mode of drying and curing, * * * 20 cents tax per pound.

Would any one doubt that this would have included snuff in these descriptions, covering all forms of manufactured tobacco; but when this is taken in connection with a subsequent clause of this very section, "that all tobacco and snuff now in bonded warehouses * * * shall be taken out at the re-

duced rate of this act," the purposes of Congress would seem to be too manifest to admit of a doubt.

If, therefore, this section would have included sunff, provided the amendment had been made to come in after the 1st clause of 61st Section of act 1868, why should not that section now equally include snuff. Can this be changed because by some mistake in engrossing the amendment, or other way, it has been made to come in after the 2d clause of the old act of '68.

If the whole of the amended act of '72 is examined it will be found that every provision which is made in regard to other forms of manufactured tobacco is made in regard to snuff.

"Manufacturers of tobacco shall each pay $10. Every person whose business is to manufacture tobacco or SNUFF for himself, * * * * whether such manufacture shall be by cutting, pressing, grinding, (that is, granulating,) crushing or rubbing of raw or leaf tobacco, or otherwise preparing raw or leaf tobacco, * * * or putting up for use or consumption, * * * of tobacco resulting from ANY PROCESS of handling tobacco, shall be regarded as a *manufacturer* of tobacco."

This clause is but the exact counterpart of the first clause of this 31st Section; the latter describes all classes of manufactured tobacco, the subjects of the 20 cents uniform tax; the former, all the processes of manufacture which subjects manufacturers of leaf tobacco to the uniform special or license tax of $10.

Section 67, as amended, required the collector to prepare suitable and special stamps for the payment of the tax (not taxes) on tobacco and snuff.

This did not authorize him to prepare stamps for

two distinct rates on snuff, as his construction required after 1st July, 1872.

This court has already construed what Congress meant by the 2d clause above quoted, "all tobacco and snuff now in bonded warehouses," *Jones* vs. *Blackwell*, 10 Otto, which accords fully with our views here.

It will be seen on what narrow grounds the court placed its decision at p. 13 Record; that the evidence did not show that snuff was *synonomous* with *granulated tobacco*; it did show that it was one of the forms of ground or granulated tobacco, which was all that the plaintiffs were required by law to show to bring it under the 20 cents uniform tax.

If there was any doubt whether this description included snuff, the subsequent descriptions clearly included it; but the court seems not to have noticed these, or the subsequent clause placing tobacco and snuff at the reduced rate of that act. In other words, contrary to every maxim of interpretation, the consideration and judgment of the court are made to rest on only one descriptive clause, when there are 4 or 5 others in the same paragraph of the amended law.

The court below has greatly mistaken that the intent of Congress in this amendment was to be collected from any *particular* expression rather than from the *general* expression of the whole act.

See 4 Bing., 196 C. J. Best.

We submit, in conclusion, that the court was clearly in error in not only the reasons assigned for, but in the judgment itself.

Respectfully submitted,

W. P. BURWELL,

Att'y for Plaintiffs in Error.

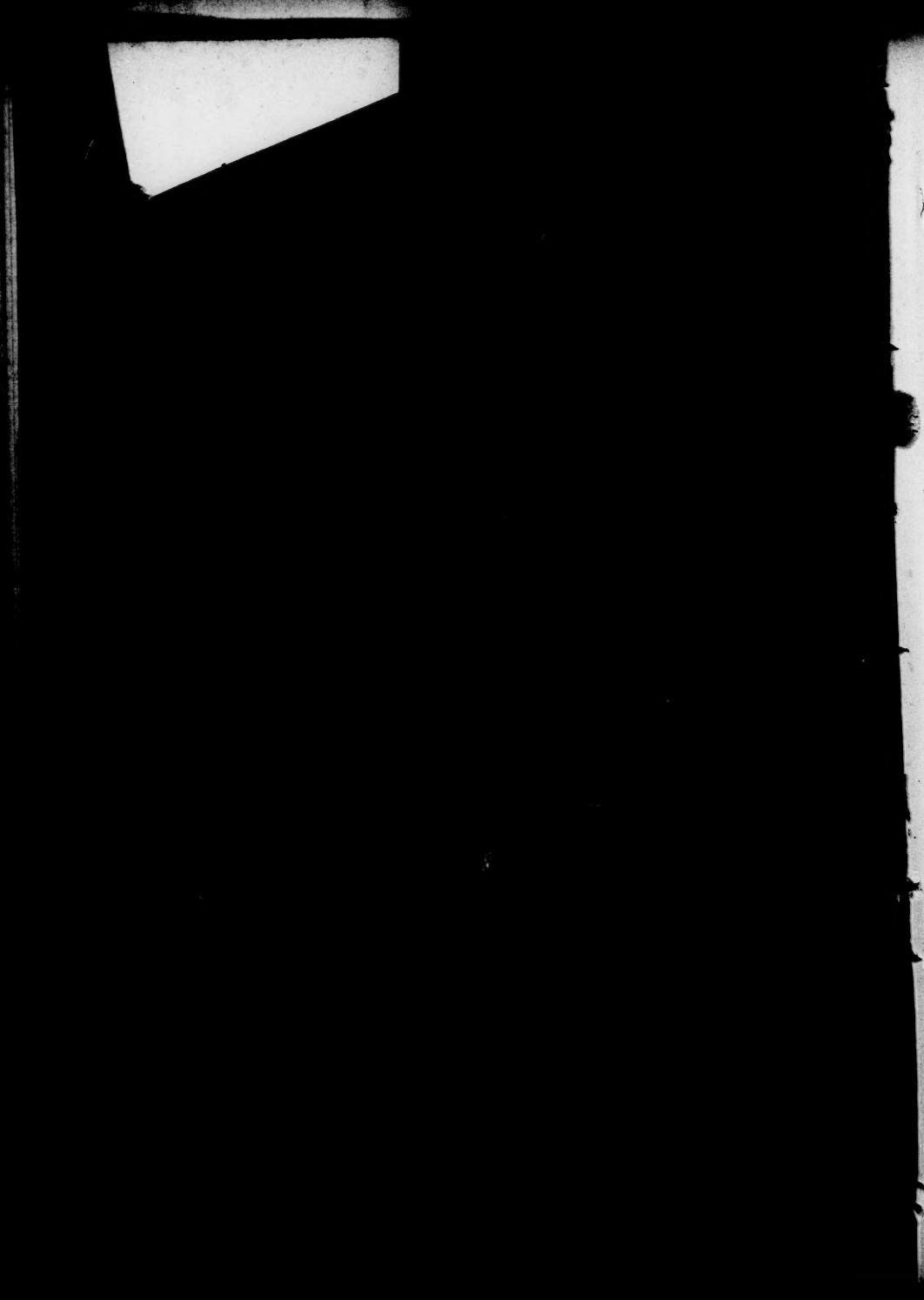
[redacted]

[redacted]

[redacted]

[redacted]

[redacted]



In the Supreme Court of the United States.

OCTOBER TERM, 1881.

VENABLE & SON
vs.
RICHARDS, COLLECTOR, &c. } No. 295.

BRIEF FOR THE COLLECTOR.

This was a suit for money exacted by the defendant betwixt August, 1872, and June, 1875, as a *tax* upon *snuff* manufactured by the plaintiffs.

It had originally been brought in a State court, but upon the petition of the collector had been *removed*, under section 643 of the Revised Statutes, into the circuit court of the United States. At October term, 1877, of the latter court, trial by jury was waived (folio 29) and thereupon the court found "that the said defendant did not promise and undertake," &c., and gave judgment accordingly.

Subsequently, in June, 1879, a bill of exceptions was taken, and a writ of error allowed.

After stating the *removal* and an *exception* thereto, and also that the parties had stipulated that the facts

should be found *specifically* by the court, and that the plaintiffs upon the trial had proved that as manufacturers of snuff they had been compelled to pay tax at the rate of 32 cents per pound, from August 1872, to June, 1875; also, that the Commissioner of Internal Revenue had issued circular instructions to collectors, after the passage of the act of June 6, 1872, directing that tax upon snuff and tobacco withdrawn from bonded warehouses should be paid according to the *reduced* rates of that act,—this bill of exceptions sets out that witnesses were produced by the plaintiffs who stated that *granulated tobacco* (see Rev. Stat., sec. 3368, *below*), was a term not known to the trade in Virginia, and not known *to them;* and, that, "there being no evidence to show that the term *snuff* was synonymous with *granulated tobacco*," the court decided that the rate of tax exacted by the defendants was the proper rate; "whereupon, the court found for the defendant on the issues joined," and judgment was rendered accordingly.

In the first place *it is submitted that the record contains no bill of exceptions properly so called.*

It may be doubted (20 How., 252, 2 Black, 563) whether in any case a bill of exceptions can be filed so long after a trial as this one has been; *i. e.*, counting from October, 1877 (folio 29), *twenty months*, or, rather, as the *verdict* of October, 1876, was not set aside by the order of November 1 thereafter (folio 29), *thirty-two months;* but waiving that, this bill contains no *exceptions* but the one taken to the order of *removal;* and as this was a matter appearing upon the record proper, it was not fit for a bill of exceptions.

If the bill of exceptions be set aside, the record shows

only a *general verdict* by the court in October, 1876, or October, 1877 (folios 28 and 29), without contemporaneous objection to anything that passed at the trial.

Two questions are made by the plaintiffs in error:

1. As to the validity of the *removal*.

2. As to the construction placed by the court below upon the act of 1868, ch. 186, sec. 61, as amended by that of 1872, ch. 315, sec. 31. (See Revised Statutes, sec. 3368.)

1. It is argued by the plaintiffs in error that the act of 1875, in regard to *removals* has repealed section 643 of the Revised Statutes upon the like matter.

Section 643 embodies, amongst others, the well-known act of 1833, which gave permanent form to certain temporary legislation by which Congress in 1815 (3 Stats., 198, sec. 8), and thereafter, gave protection to officers of the United States engaged in suppressing smuggling. It provides that "when any civil suit, or criminal prosecution is commenced in any court of a State against any officer appointed under, or acting by authority of any revenue law of the United States," &c., the same "may, at any time before the trial or final hearing thereof, be removed for trial into the circuit court," &c.

The policy and purpose of this act plainly requires that this remedy should be given *without regard to the amount for which the officer might be sued.*

The act of 1875, ch. 137, sec. 2 (*Rich.* 174), provides for the removal of "any suit of a civil nature, &c., where the matter in dispute exceeds, exclusive of costs, the sum of $500, and arising under the Constitution or laws of the United States," &c.

It is submitted as quite plain that the general words of the act of 1875 do not operate upon the special provisions of the Revised Statutes (above); and that, as already suggested, Congress did not intend to restrict the protection by the United States of their officers, to cases where they might be sued for $500, or more.

In this connection I beg to refer to the Opinion of the learned Judge in the court below, when overruling the objection of the plaintiffs to the *removal*. (Record, pp. 3 and 4.)

2. As regards the construction placed upon the statute of 1872, ch. 315:

Supposing that this court shall be disposed to overlook all irregularities therewith connected, and regard the action of the court contained in the paper called a bill of exceptions as in substance *an amendment of the record* at October term 1876, and as in this way sufficiently presenting the question now under consideration, I submit that the construction placed upon the statute by the learned Judge was obviously correct.

Upon an inspection of the statement of payments made on account of the tax in question, contained on pages 11 and 12 of the record, it appears that sundry items therein (those of 1874–'75), amounting to $6,463.84 (including an alleged *excessive exaction* of $2,423.94), were made after the Revised Statutes had gone into effect, and, therefore, were regulated by section 3368, which presented the form of the act of 1872 then in force.

That section was as follows:

> Upon tobacco and snuff manufactured and sold, or removed for consumption or use, there shall be levied and collected the following taxes:
>
> On snuff manufactured of tobacco, or any substitute for tobacco,

ground, dry, damp, pickled, scented, or otherwise, of all descriptions, when prepared for use, a tax of thirty-two cents per pound. And snuff-flour, when sold or removed for use or consumption, shall be taxed as snuff, and shall be put up in packages and stamped in the same manner as snuff.

On all chewing and smoking tobacco, fine-cut, cavendish, plug, or twist, cut, or granulated, of every description; on tobacco twisted by hand or reduced into a condition to be consumed, or in any manner other than the ordinary mode of drying and curing, prepared for sale or consumption, even if prepared without the use of any machine or instrument, and without being pressed or sweetened; and on all fine-cut shorts and refuse scraps, clippings, cuttings, and sweepings of tobacco, a tax of twenty cents a pound.

It seems that no reasonable question can be entertained that under these provisions, after December, 1873 snuff was liable to a tax of 32 cents per pound.

Again, as it appears by inspection that section 3368 is a mere reproduction of the previous law, it is as evident that so many of the items of payments in the list upon pages 11 and 12 as were made before January, 1874, were governed by precisely the same rule as those made afterwards.

The act of 1872, ch. 315, sec. 31, provided:

That on and after the 1st day of July next, the act entitled "An act imposing taxes on distilled spirits and tobacco and for other purposes," approved July 20, 1868, be, and the same is hereby, amended as follows:

That section 61 be amended by striking out all after the second paragraph, and inserting in lieu thereof the following words: "On all chewing and smoking tobacco," &c.

The first paragraph in the act approved July 20, 1868, above-mentioned, is for all practical purposes precisely that above quoted from the Revised Statutes, and beginning: "*Upon tobacco*," &c.

So the *second paragraph* therein is that above quoted, &c., beginning: "*On snuff*," &c.

The provision in the act of 1872 above mentioned as beginning: "*On all chewing and smoking tobacco*," &c., is the third paragraph in section 3368, quoted above.

It is submitted that there is no error in the record.

S. F. PHILLIPS,
Solicitor-General.